1938

* Dec. 12.
* Dec. 23.

HIS MAJESTY THE KING .....APPELLANT;

AND

BETTY COHEN .....RESPONDENT.

ON APPEAL FROM THE COURT OF APPEAL FOR ONTARIO

Criminal law — "Common bawdy house" (Criminal Code, s. 225).

Accused had rented a room and there had intercourse with men who paid her. Some called at the room and others were accosted by her on the street. No woman except accused had intercourse with men in the room.

Held: Accused kept "a common bawdy house" within the definition of that term in s. 225 of the *Criminal Code*.

APPEAL by the Attorney-General for Ontario from the judgment of the Court of Appeal for Ontario which (Middleton J.A. dissenting) dismissed the Attorney-General's appeal against the acquittal of the accused by a magistrate on the charge against her (under s. 229 of the *Criminal Code*) of unlawfully keeping a disorderly house, that is to say, a common bawdy house.

C. R. Magone for the appellant.
G. J. McIlraith for the respondent.

The judgment of the Court was delivered by

KERWIN, J.—The accused was charged under section 229 of the *Criminal Code* with keeping a disorderly house, that is to say, a common bawdy house. This latter expression is defined by section 225 of the *Code* as follows:

A common bawdy-house is a house, room, set of rooms or place of any kind kept for purposes of prostitution or for the practice of acts of indecency, or occupied or resorted to by one or more persons for such purposes.

There is no dispute about the facts, as the accused gave evidence from which it appears that she had rented a room and there had intercourse with men who paid her. Some called at the room and others were accosted by her on the street. Another girl lived with her but nothing turns upon this as this girl was not a prostitute. No woman had intercourse with men in the room except the accused.

* PRESENT:—Duff C.J. and Rinfret, Crocket, Kerwin and Hudson JJ.

The magistrate dismissed the charge, following the judgment of the Court of Appeal for Ontario in *Rex* v. *Sorvari* (1). That Court, with Middleton J.A. dissenting, affirmed the acquittal and from its order the Crown now appeals.

Prior to 1907, a common bawdy house was defined by section 225 of the *Code* as "a house, room, set of rooms or place of any kind kept for purposes of prostitution," but in that year, by 6-7 Edward VII, chapter 8, section 2, the section was repealed and a new one enacted in the same terms but with the addition at the end, of the words "or occupied or resorted to by one or more persons for such purposes." These added words clearly cover the circumstances in the present case where there was not an isolated act of fornication but a habitual occupation of the room for purposes of prostitution.

This same view had been expressed by the Ontario Court of Appeal in *Rex* v. *Margaret Smith* (2), but this decision was not cited to the court that decided the *Sorvari* case (3) or to the court below in the present appeal. To the same effect is the decision of the British Columbia Court of Appeal in *Rex* v. *Miket* (4).

The appeal should be allowed. All the facts are before the Court but we merely direct a new trial, which we were informed by counsel for the appellant it is not the Crown's intention to prosecute.

Appeal allowed.

Solicitor for the appellant: *W. B. Common.*
Solicitor for the respondent: *G. J. McIlraith.*

(1) [1938] O.R. 9.
(2) (1908) 12 O.W.R. 80.
(3) [1938] O.R. 9.
(4) (1938) 70 C.C.C. 202.